

Seidman-Kingsbury  
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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-206921

**DATE:** August 17, 1982

**MATTER OF:** D. J. Findley and Company

**DIGEST:**

1. Protest alleging solicitation improprieties that are apparent prior to bid opening must be filed before bid opening.
2. Oral communication to contracting activity must, to constitute protest, clearly convey intent to protest. Threat to protest, qualified by assertion that potential bidder seeks only to delay bidding, does not clearly convey intent to protest.

D. J. Findley and Company (Findley) protests provisions of Navy solicitation No. N00600-82-B-19774 for technical and professional services for a Family Services Center. Findley complains that one provision of the solicitation requiring firms to include a Maryland social worker's license in their bids conflicts with another provision that merely requires that a bidder be qualified to obtain a Maryland social worker's license or a comparable one. We dismiss the protest as untimely.

After having the invitation for bids (IFB) in its possession for over one week, Findley telephoned the buyer on the day before bid opening to request that the opening be postponed. The buyer refused. Findley then requested clarification of the conflicting licensing requirements. He was told that his bid would not be rejected for failure to have the Maryland license. According to the Navy, Findley then "threatened to protest and indicated that he only wanted to delay bid opening."

That same day, Findley sent a mailgram to our Office protesting the solicitation licensing requirement. We received the mailgram two days later--the day after bids were opened.

A protest alleging improprieties in a solicitation that are apparent prior to bid opening must be filed either with the contracting agency or our Office before that date, 4 C.F.R. § 21.2(h)(1) (1982). Findley's protest, filed in our Office after opening, therefore is untimely. See Keuffel & Esser Co., B-206229, February 9, 1982, 82-1 CPD 123.

We recognize that Findley contacted the contracting agency about the matter one day before bid opening. While an oral protest to the contracting agency is permitted, Defense Acquisition Regulation § 2-407.8(a) (1976 ed.), the communication must clearly convey an intention to protest. Joule Technical Corporation, 58 Comp. Gen. 550 (1979), 79-1 CPD 364. In our view, an oral threat to protest merely expresses the possibility of a protest in the future, and thus cannot be used to fix the date of protest for timeliness purposes.

The protest is dismissed as untimely.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel